

CUSTOMARY LAND RIGHTS OF THE INDIGENOUS PEOPLE OF THE CHITTAGONG HILL TRACTS IN BANGLADESH: AN ANALYSIS OF LEGAL ISSUES

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Abstract

The customary land rights of the indigenous people of the Chittagong Hill Tracts (CHT) are based on their customs and traditions that date back many centuries. The British colonial government introduced a regulation popularly known as the CHT Manual, which acknowledged many customary rules. The British first introduced the concept of private property rights in the CHT. There have often been conflicts between the local indigenous people and state agencies, conflicts which are the results of undermining the customary land rights. This article analyzes the land rights of the indigenous people within the legal framework.

Key words : Land rights, indigenous people, legal issues, Chittagong Hill Tracts, Bangladesh

I. INTRODUCTION

Indigenous peoples' customary land rights have assumed as growing concern on both national and international planes. Land rights of the native Indians in America, the aborigines in Australia and New Zealand against the European migrators and their conquest have resulted in prolonged legal and political battles. Indigenous land rights in ancestral domains in the Philippines, Thailand and Indonesia have been the subject of a major human rights campaign and juristic writings (Farooque, 1997a). At the international level, multilateral instruments have been adopted, aimed at recognizing traditional rights of indigenous peoples. The most prominent among those is the "Universal Declaration on the rights

of Indigenous People" drafted by the Economic and Social Council of the United Nations in 1989. The main purpose of the Declaration is to further recognize, protect and restore the rights of indigenous peoples. Reflecting the increasing importance of this issue, International Labor Organization (ILO) has substantially revised its previous Convention No. 107 of 1957 with Convention No. 169 in 1989. To date, the latter Convention marks a significant development in international law pertaining to indigenous peoples, including their land rights.

The denial of customary land rights by the state has become the cause of the conflict between the state and the indigenous people of many areas in the world. The increasing number of armed conflicts in indigenous areas

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emphasizes the urgent need to address the needs and concerns of indigenous people in a border spirit of understanding. Like other indigenous territory, the people of the Chittagong Hill Tracts (CHT) of Bangladesh have their based economies linked to the land they traditionally occupy. Land is the source of their spiritual, cultural and social identity, in addition to being their principal resource base. But the indigenous people are being displaced from their lands, their ancestral traditional abode and surroundings in the name of or as consequence of development activities by the government. Therefore, the conflict between public agencies and the people has resulted in a conflict of traditional rights versus statutory rights or management. Consequently, there were armed conflicts for more than two decades which ceased with the signing of Peace Accord in 1997 between the Government and the Jana Sangati Samiti (JSS).

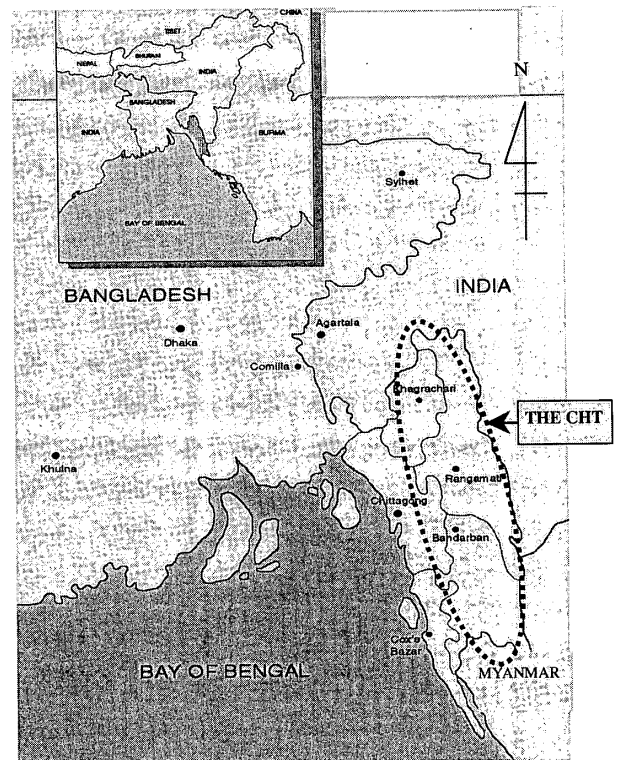
It is both urgent and timely that the issue of land rights be addressed in an open and comprehensive manner. The goal of this article is to provide some measures of general utility regarding the customary land rights of the indigenous people of the CHT. The study begins with some perspectives on the development of the concepts involving the land issues in the CHT. This will be followed by an analysis of the tenurial options offered by the government to the indigenous people within the legal framework.

II. The CHT and Its Inhabitants

The CHT is the south-eastern part of Bangladesh,

1 The Peace Accord: An accord was signed in December 2, 1997, between the government and the Jana Sangati Samiti (JSS), a political wing of the indigenous people. According to the Peace Accord, the indigenous guerillas surrendered their arms to the government.

bordering the Arakan and Chin State of Myanmar, and Tripura and Mizoram States of India (Fig. 1).



Source: Roy, 2000.

Fig.1: The Chittagong Hill Tracts (CHT) of Bangladesh

The region now includes three administrative districts namely, Rangamati, Khagrachari and Bandarban covering an area of 13,295 square kilometers in extent or about 10% of the surface of Bangladesh (Roy, 1998). The area of the CHT is roughly the same size of Iwate Prefecture of Japan. While most of Bangladesh is flat, the CHT, a unique territory with mountains, is completely different in physical features, landscapes, agricultural practices and soil condition from the rest of Bangladesh (Gain, 2000). The region is a mass of hills and mountains and deep and narrow valleys covered with dense forests overgrown with vines and interspersed with swamps of all sizes, many of which have now drained and converted into agricultural lands. It is situated between 21°11' and 23°45' North latitude and between 91°42' and 92°42' East longitude.

Table 1: Land Utilization of CHT and Bangladesh

(in thousand hectare)

	CHT	%	Bangladesh	%
Total Area	1,335	100.0	14,906	100.0
Forest	1,120	83.8	2,265	15.2
Reserved & Protected Forest	280	25.0	1,375	60.7
Unclassified State Forest	840	75.0	733	32.4

Source: BBS, 1999.

Table 2: Indigenous Population by Ethnicity in the CHT

Ethnicity	Rangamati	Khagrachari	Bandarban	Total
Bawm	549	0	6,429	6,978
Chak	319	0	1,681	2,000
Chakma	157,385	77,869	4,163	239,417
Khumi	91	0	1,150	1,241
Khyang	525	0	1,425	1,950
Lushai	436	0	226	662
Marma	40,868	42,178	59,288	142,334
Mru	126	0	0	126
Murong	38	40	21,963	22,041
Pankho	3,128	0	99	3,227
Rakhain	70	0	0	70
Tanchangya	13,718	0	5,493	19,211
Tripura	5,865	47,077	8,187	61,129
Others	174	355	229	758
Total	223,292	167,519	110,333	501,144

Source: BBS, 1991.

Forests encompass of 83.8% of the total area of the CHT. All the forests owned by the national government are divided into Reserved Forests and Unclassified State Forests (USF) (Table1). Reserved Forests are managed by the Bangladesh Forest Department (FD) and the USFs are under the control of local district authorities. Population-wise the CHT have the lowest density in the country of 96 persons per square kilometer compared to the national average density of 827 persons per square kilometer (Gain, 2000).

Ⅲ. 'Land Rights' in the CHT

1. Early History

Land holdings of the indigenous people of the CHT were based on local customs and traditions that dates backs to many centuries. Up to 1793 the indigenous Chiefs of the area possessed all lands and their subjects were to be taxed for using the land. The region was annexed by Delhi's satraps in Bengal in the mid 17th century and at that time the Chakma—the dominant ethnic group in the north-western CHT—got engaged in protracted warfare with the Mughals and eventually there was an accord between the Chakma and the Mughals. The Chakma Chief agreed to pay trade tax to the Mughal court, and in return, they were granted autonomy (Serajuddin, 1971, Amena Mohsin 2000, Gain and Morol, 1995). Concept of private ownership of land had not made its mark at this time, although the Chief became an exception in the society. However, in order to ensure revenue collection, the Mughal granted the Chief monopoly over all trade between the hills and the plains and this helped the Chief establish control over all clans (Ali, 1993). The Chief, in return to absolute power given by the Mughals, had to ensure that the fixed tribute of cotton was regularly given to the Mughals until the CHT was

ceded to the British East India Company in 1760. Following the Soldiers Uprising of 1857, the British took over the direct administration of the Indian colonies from the East India Company. When the British control was established, the powers of the Chief and his associates were more concentrated. After tightening the control over the hills the British introduced monetization into the 'subsistence-and-barter' economy and replaced the cotton tribute with cash (Gain and Morol, 1995).

With a desire to attain political stability and economic control the British, during this period, divided the CHT into three (taxation) circles: (a) the Maung circle of 653 square miles in the north, (b) the Chakma Circle of 1,658 square miles in the center, and (c) the Bohmong circle of 1,444 square miles in the south. Each of these circles was placed under the jurisdiction of a local Chief who was responsible for collecting revenues and managing internal affairs.

2. Indigenous Concepts of Land Rights

Land rights in the CHT are based on traditional occupations, with the land and its resources providing the enabling environment for subsistence activities. The land provides the material base for the utilization of their cultural rights, and their right to a separate identity as a distinct people. Indigenous land rights are conceptualized within the framework of a separate legal regime, distinct from the rest of the country. It is inherent and inalienable, and is conceptualized within the framework of customary rights. Rights and interest in land are regulated and administered by indigenous institutions according to customary law and include provision for the control, use and management of the land and its resources.

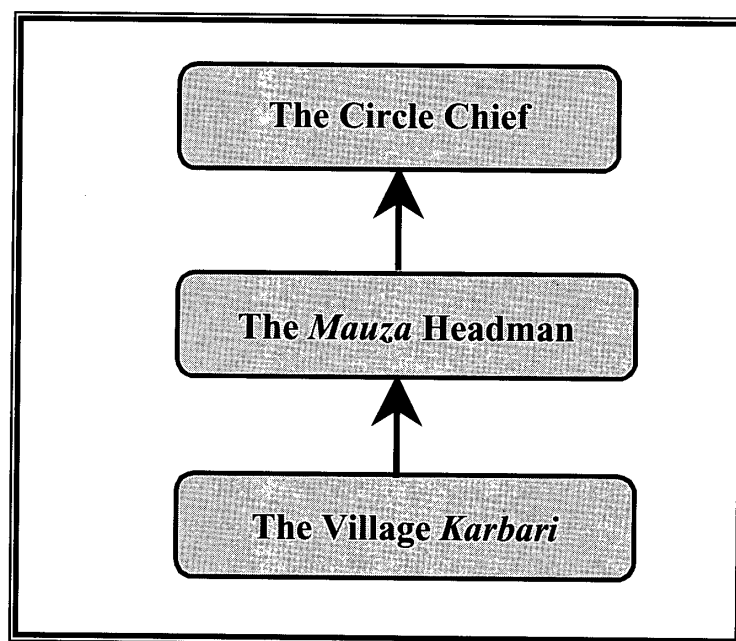


Fig.2: Indigenous Institutions in the CHT

Prior to a virgin piece of land being utilized for a specific purpose, e.g., to cultivate *jhum*², to build a house or temple etc., a simple ceremony is performed to appease the spirits and to ask for good luck. The indigenous people believe that in the ultimate analysis the land belong to the community, is theirs to use for the duration of their lives, and must be preserved for future generations. According to the report of an international fact-finding mission to the CHT:

“In the land system in the Hill Tracts, hill people could only subsist from their fields as a part of community, bound in ties of mutual reciprocity. For the shifting cultivators of the Hill Tracts, land is common property, belonging to the community, kinship groups and even members of the spirit world, with individual families exercising the right to use

the land—in western terms, a usufruct” (CHT Commission, 1991).

However, western concepts like usufruct do not carry the same connotations in indigenous law. Ownership and possession are cumulative rights, and those lands, which are not under individual ownership, are identified as common lands, accessible to all member of the community. This concept of land rights for the hill people are inextricably linked to collective rights and these lands according to their customs and traditions (Fig. 2) In the CHT, common land rights can be categorized at four different levels:

(I) Village Level: The village or hamlet is known as Para in the CHT. A Para consists of the inhabitants of a same ethnic group. The village is jointly responsible for the use, management and control of the lands surrounding their village. The head of the village known as Karbari, is nominated by the villagers themselves and formally appointed by the Chief based on the wishes

² *Jhum*, a traditional swidden system of cultivation, a subsistence agriculture, is practiced by the indigenous people of the CHT.

of the concerned villagers. *Karbari* is responsible for all matters relating to the Para.

(2) The Mauza Level: A number of villages are grouped together to form a territorial unit of jurisdiction called mauza. There are 356 *mauzas* in the CHT today. Each *mauza* has a Headman who is responsible for collection of revenue, preservation of peace, administration of customary laws etc.

(3) The Circle Level: Traditionally, the Circle Chiefs are responsible for the administration of their respective territories including revenue and land claims matters. The Chief holds the land in trust for the people as a whole, and not as personal property.

(4) The CHT Level: The indigenous people have the right to individually and collectively own, occupy and possess the land of the CHT. It is theirs to use, manage and control through their traditional institutions, as they have been doing since time immemorial.

The modalities for land allocation are governed by customary practices and usage. The community decides upon the modalities for land conservation and use. This includes the identification of certain areas as common lands, e.g. grazing grounds etc. Forests and surrounding areas are accessible to all. If any disputes should arise, the matter is placed before the *mauza* headman and dispute resolution is within the mandate of the indigenous administration.

The concept of shared use is significant in this context. Although individual families have exclusive rights to specific areas such as houses and immediate surrounding areas, the community as a whole shares rights of access and use to the

common lands which are collective property of the entire community. The community has the responsibility for resource conservation within these areas, with the ultimate responsibility resting on the *mauza* headman.

The provisions mentioned in Rule 40 of "Rules for the Administration of the Chittagong Hill Tracts" made under section 18 of the CHT Manual, deal with the application of the customary, social and family laws of the indigenous communities.

3. Introduction of Legal Rights to Land

In 1860 the CHT was separated from Chittagong Regulation District and an officer-in-charge with the title of Superintendent over the hill people was appointed. Among other things, the duty of the Superintendent was to establish peace in the Hill Tracts to ensure the economic interests of the government. In 1887 the Superintendent's designation was changed to Deputy Commissioner (DC) and he was vested with full control of all matters relating both revenue and justice through the Hill Tracts. However, as the indigenous system of land tenure in the CHT differed considerably from British concepts of land administration, the colonial government proceeded to restructure the land revenue system and to bring it into greater conformity with their system of land tenure. A strong effort was made to discourage *jhum* cultivation and to induce the indigenous people to adopt plough cultivation.

One of the major reasons for introducing plough cultivation by the British was that to collect the revenue easily without depending on the indigenous functionaries. The swidden farmers are tied to their Circle Chiefs, and headmen who controlled their people and collected *jhum* tax from them, and shared part of the revenue with the government. In the case of plough culti-

Table 3 : Major Provisions on Land Laws in the CHT

Particulars	Related Land Laws
Settlements & Leases (General)	Rule 34, CHT Manual
Homestead of Indigenous People in Rural Areas	Rule 50 (land 2), CHT Manual
Control and Regulation of <i>Jhum</i> Cultivation	Rule 41, CHT Manual
Conservation of Natural Resources of <i>Mauzas</i>	Rule 41A, CHT Manual
Role of District Councils in Land Administration	Section 64, LGC Acts, 1989

Sources: CHT Manual (1900) and LGC (1989)

vation the land owner could pay his rent directly to the state treasury; the chiefs would not be allowed to share the plough land revenue.

Thus during the colonial period, the traditional type of *jhum* agriculture was partly replaced by wet rice cultivation. The introduction of the wet rice cultivation laid the foundation for a radical transformation in the indigenous social structure, especially in the sphere of landownership. More, precisely, the irrigated field of valley was cleared and prepared entirely by a single family and the government gave the family proprietary rights over that portion of land. This gave the family every right to this portion of land, including right of alienation. This has led the emergence of private property of land in the CHT. The introduction of the plough cultivation led to social and economic differentiation among the various indigenous groups. The groups who had settled along the major river valleys, were the main beneficiaries of the introduction of plough cultivation in the CHT. On the other hand, the indigenous groups who lived on the mountain ridges, continued to practice *jhum* cultivation until today. So the British had created two types of land tenure in the CHT: private, heritable plough land and common, migratory holdings of *jhum* land.

4. National Legislation and Customary Laws in the CHT

Many land laws that apply to the rest of the country do not apply to the CHT. CHT Manual of 1900 and Hill District Local Government Council Acts of 1989 are the two important laws of the CHT. The Manual functions in the name of constitutional legal instrument for the CHT in that it regulates the manner and extent of the application of other laws to the region.

In the areas outside the CHT, most of the important provisions on land-related matters are contained in the East Bengal State Acquisition and Tenancy Act (EBSTA) of 1950 but it does not apply to the CHT. The most important land-related laws of the CHT excluding the areas of the Reserved Forest are contained in “rules” passed in accordance with the section 18 of the CHT Manual, the CHT Land Acquisition Regulation of 1958 and the Local Government Council (LGC) Acts of 1989.

5. Traditional Rights and the Constitution

The Constitution of Bangladesh has prescribed measures to remove inequality between persons which aims at ensuring “equitable distribution of wealth among citizens” and providing opportunities to attain uniform level of economic development (Farooque, 1997a). The principle of state

policy explicitly enshrines the protection of private rights and tradition from all forms of exploitation and interference to “adopt measures to conserve the cultural traditions and heritage of the people” (The Constitution of Bangladesh, 1972). These principles of state policy explicitly enshrine the protection of private rights and traditions from all forms of exploitation and interference. The principles are fundamental to the governance of Bangladesh. But in reality, traditional rights in CHT had been undermined in different period of time by introducing the state policies in the region. All of the policies disregarded the indigenous people and their value systems and traditional life (Ali and Tsuchiya, 2002).

IV. ‘Discussion and Conclusion

The rights of the indigenous people, as a part of the broad human rights phenomena, have acquired significance in recent times. The recent international thinking on indigenous rights is exemplified by the draft of Universal Declaration on the rights of indigenous peoples. According to this draft, “indigenous people have the right to participate fully in the political, economic, social and cultural life of the state while maintaining their distinct political, economic social and cultural characteristics.”

The Rio de Janerio Declaration on Environment and Development, adopted on 14th June, 1992 by the United Nations conference proclaims that states should recognize and duly support indigenous peoples' identity, culture and interest and enable their participation in the achievement of sustainable development.

The International Labor Organization (ILO) also in its convention No. 169, year 1989, on “Indigenous and Tribal Peoples,” suggested that governments must consult with indigenous and

tribal peoples within their countries on development projects and other activities affecting them. It provided for respect for their land rights. These include protection of their lands and right to refuse displacement from their lands except in exceptional circumstances and with appropriate compensation.

The constitution of Bangladesh, very much in keeping with the spirit of these instruments, declares in its preamble, “...It shall be a fundamental aim of the state to realize, through the democratic process, a socialist society, free from exploitation—a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizen” (The Constitution of Bangladesh, 1972).

Recognition of customary or traditional land rights through prescription had undermined the development of tenancy laws in Bangladesh. The Governments of Pakistan and Bangladesh periodically implemented many development programs in the CHT. All of these programs did not bring any benefit to the indigenous people. Rather these people lost their traditional rights due to the development activities in the CHT. The Kaptai lake submerged at least 40% of the cultivable lands. The military took many lands for their camps, the plain land people were migrated to the CHT lands and Forest Department occupied many lands for commercial plantation. Sometime the government claims that the land of the CHT is the national property (defined as *khas* land) but the indigenous people had utilized those lands for generations with their traditions. The

3 Major development programs are: (1) Creation of Kaptai Dam (Hydro-electric Project) in 1962, (2) Militarization in the CHT since 1972, (3) Population Transfer Programs in 1979, and (4) Afforestation Programs in 1980s.

government did not consider local traditions and thus there were conflicts between the indigenous people and the state agencies. As a result, there was an insurgency for more than two decades.

The purpose of the legal regime in preserving traditional rights must not be construed to create either a super-nation or a sub-nation within a nation (Farooque, 1997b). Having the law may not ensure social justice that requires broader understanding of the relevant perspective. Political discretion, national development planning, social policy, resource distribution, priority of national needs, implications of global policies, are the constituents of the framework that govern the subject. With the emergence of environmental priorities, the traditional and prevailing management approaches are likely to undergo changes in approach and perceptions and utilization.

However, traditional land right of the indigenous communities is a very crucial issue related to human rights as well as environmental perspectives. These communities are integral part of the resources like any other species whose natural or traditional habitat is ecologically dependent. In Bangladesh, the conflict between traditional rights and the statutory regime has primarily originated more from the attitudes than the content of the regime. It contradicts the traditions of the indigenous people, the public agencies and partly, the legal and judicial systems. Conflicts and contradictions had a major impact on resources where competition over ownership has taken precedence over resource conservation.

It is a fundamental fact of human existence that no particular nation, community, clan or group of people can live without a proper recognition of its human entity at the first place, and at the second, a positive approach of its rules so far as its system of governance is concerned.

Nowadays we speak of good governance, i.e., transparency, accountability, rule of law and equal participation of all in the affairs of the state. This may be true in case of our self-government for our own population, when we view things as the majority people. But there lies a strict distinction with regard to the minority population who also form a considerable part of our statehood with equal contribution to the Gross Domestic Product (GDP), revenue and development. Notwithstanding their cultural divergence and separate ethnicity, they have long been amongst us within the same territory. But no government did not ponder over the grave important issue that they are in the need. For several decades, they experienced nothing but deprivation, oppression and violation of many of their fundamental human rights (Haque *et al.* 2001).

The Peace Accord addresses the land issues of the CHT. Many experts opine that the lion-share of the problems resolves around with the land disputes and any amicable settlement to this question could mark the new beginning for the CHT. The indigenous people have traditionally been enjoying special privileges regarding the land of that area both in their personal and collective capacity. The justification behind such privilege lies in the fact that it is only the indigenous of this country that have traditionally been able to make the terrain of the hill-Bangladesh their habitat, having adopted a peculiar and difficult way of surviving there and earning their livelihood.

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バングラデシュ・チタゴン丘陵地帯における先住民の慣習的な 土地所有権: その法律的問題の分析

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要 旨 チッタゴン丘陵地域(CHT)の先住民の土地所有制度は何世紀にもわたる慣習法を基礎としている。イギリスの植民地支配下ではCHTマニュアルと呼ばれる土地所有に関する規制を導入し、多くの慣習的な制度を導入した。当初は、私的土地所有を原則とした。そこでは、在来の慣習に固執する地域住民と政府との紛争が頻発した。この研究では、法的な枠組みのなかでの慣習的な住民の土地所有に焦点をあてている。

キーワード 土地所有権、先住民、法律的問題、チタゴン丘陵地帯、バングラデシュ